



**CABLE & WIRELESS
NORTH AMERICA, INC.**

RECEIVED

JUN 20 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

DOCKET FILE COPY ORIGINAL

Cable & Wireless
North America Inc
1919 Gallows Road
Vienna
Virginia 22182

Telephone: (703) 790-5300

June 20, 1994

Keith E. Bernard
Vice President
International and
Regulatory Affairs

EX PARTE OR LATE FILED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Ex parte written presentation in
Gen. Docket 90-314 and ISP 94-002

Dear Mr. Caton:

Attached please find two copies of a written ex parte presentation delivered to Chairman Hundt's office late Friday afternoon. This presentation summarizes Cable & Wireless, Inc.'s views on designated entity participation in broadband PCS.

Thank you for your attention in this matter.

Sincerely,

Keith E. Bernard
Keith E. Bernard

Attachment

No. of Copies rec'd 0+1
List ABCDE



**CABLE & WIRELESS
NORTH AMERICA, INC.**

Cable & Wireless
North America Inc
1919 Gallows Road
Vienna
Virginia 22182

Telephone: (703) 790-5300

Keith E. Bernard
Vice President
International and
Regulatory Affairs

June 17, 1994

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: Gen. Docket 90-314 -- Designated Entity
Participation in Broadband PCS

Dear Chairman Hundt:

After our meeting on Monday, June 13, 1994, I thought it useful to provide some additional thoughts of Cable & Wireless, Inc. concerning how to structure designated entity participation in broadband PCS. I appreciated the opportunity to talk with you about this issue. I would be happy to meet with you again to discuss further our views.

Sincerely,

Keith Bernard jl
Keith E. Bernard

Attachment

**STRUCTURING DESIGNATED ENTITY
PARTICIPATION IN BROADBAND PCS**

Cable & Wireless, Inc. ("C&W") is submitting these views concerning the structuring of designated entity participation in broadband PCS. C&W agrees with the assessment that "it is imperative . . . to address the goal of creating meaningful opportunities for minorities, women, and small businesses to obtain [PCS] licenses while recognizing the capital requirements for competing in the marketplace."¹ C&W recognizes that these firms may not have wide access to capital and that funding their long-term participation in broadband PCS is in the public interest.

C&W is willing and able to develop a bidding and long-term business relationship with all well-qualified bidders for the broadband PCS spectrum auctions. C&W is also willing to make a special effort to venture with well-qualified women and minorities to further their opportunities to become PCS licensees. However, our reading of the statutory language granting the FCC authority to conduct auctions indicates that the FCC cannot favor one category of designated entity at the expense of another. Therefore, C&W is hesitant to suggest that the FCC create incentives for larger firms to develop business relationships with only women and minorities, but not small businesses in general.

¹ Chairman Reed E. Hundt, Written Testimony Before the United States House of Representatives Committee on Small Business, Subcommittee on Minority Enterprise, Finance, and Urban Development (May 20, 1994) ("Hundt written testimony").

In granting the FCC authority to conduct spectrum auctions, Congress specifically required the FCC to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures."² Congress thus conferred broad discretion upon the FCC to experiment with the methods used to ensure designated entity participation in auctions, including the use of preferences.

The statutory language also appears to require that all designated entities be treated equally and thus be afforded similar opportunities to participate in PCS.³ Fairly read, the statute may well require identical treatment of designated entities.

Awarding small businesses less significant or illusory preference invites challenges. Under accepted principles of administrative law, federal agencies must provide reviewing courts a rational basis for decision, i.e., a rational connection between the statutory goal and the methods employed to achieve

² See 47 U.S.C. § 309(j)(4)(D); see also 47 U.S.C. § 309(j)(3)(B), (j)(4)(C).

³ The legislative history reflects this same intent. See H.R. Conf. Rep. No. 213, 103rd Cong., 1st Sess. 482-484 (1993); H.R. Rep. No. 111, 103rd Cong., 1st Sess. 254-255 (1993) ("all small businesses will be covered by the Commission's regulations, including those owned by members of minority groups and women").

that goal.⁴ While Congress conferred broad discretion upon the FCC to experiment with the methods used to ensure designated entity participation in auctions, it did not grant the FCC authority to adopt auction policies which prefer one designated entity over another.

While the promotion of economic opportunities for women and minorities in the communications industry is a worthy goal,⁵ in this case, favoring one designated entity over another without Congressional approval very probably would not meet constitutional thresholds.

The FCC needs "to enhance opportunities for all Americans, especially small businesses, women, and minorities" to participate in the communications revolution.⁶ The FCC's proper focus should be "on opportunities [for designated entities] to win auctions, not guarantees of being awarded a license."⁷ We offer the following suggestions from the perspective that the opportunities should be equal for all designated entities.

⁴ See Burlington Truck Lines v. United States, 371 U.S. 156 (1962).

⁵ See Competitive Bidding, Second Report and Order in PP Docket 93-253, FCC 94-61, ¶ 290 (rel. Apr. 20, 1994).

⁶ Hundt written testimony, supra.

⁷ Chairman Reed E. Hundt, Speech Before the 1994 Convention of American Women in Radio and Television (June 3, 1994).

Set Asides

- The FCC should set-aside Block C (30 MHz) and Block D (10 MHz) for designated entities so that they have a meaningful opportunity to bid for broadband PCS spectrum.

Timing of Preference Auction

- The FCC should delay the Block C and Block D auctions until several weeks after the auctioning of Blocks A and B. This action should help designated entities in their efforts to raise capital.

Payment Terms and Conditions for the Winning Bidders

- Designated entities should be obligated to pay interest only on the amount of the winning bid (principal) over the first ten years, and the entire principal should become due and payable at the end of year ten. Interest payments should be deferred for the first five years (accumulating and payable at the end of year five), with annual interest payments due and payable at the end of each year thereafter.

Other Payment Options

- As an alternative to the above, designated entities could pay royalty fees, i.e., a percentage of their gross revenues, but no less than a predetermined amount of money (equaling the current value at auction of the average acquisition prices of Blocks A and B) by the end of year 10. If the total amount (at present value) owed to the Federal government is not paid by year 10, designated entities should have the option to borrow the balance due, raise additional equity, or sell the company.

Build Out Period

- The FCC should extend the build out period to allow construction to coincide with market demand.

Government Oversight to Ensure Local Interoperability and Interconnection

- The FCC should ensure that designated entities are able to negotiate local interconnection agreements with local exchange companies ("LECs") on the same terms that the LECs offer their own PCS affiliates.

No Equal Access Obligations for PCS Providers

- The FCC should permit designated entities to enter into interconnection arrangements with interexchange providers without government intervention.

FCC Coordination With Other Government Programs Designed to Assist Underrepresented Classes

- The Federal government is a large user of communications services both directly or through private government contractors, and it will likely take advantage of new PCS services. The Federal government should set an example by utilizing services offered by designated entities as much as possible.